

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically at the time and date indicated, which may be materially different from its entry on the record.



Dated: 11:26 AM September 20, 2012

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:)	CHAPTER 7
)	
MELINDA LOUISE ELKINS,)	CASE NO. 05-65317
)	
Debtor.)	JUDGE RUSS KENDIG
)	
)	MEMORANDUM OF OPINION (NOT INTENDED FOR PUBLICATION)
)	
IN RE:)	CHAPTER 7
)	
CLARENCE ARNOLD ELKINS, II,)	CASE NO. 05-69543
)	
Debtor.)	JUDGE RUSS KENDIG
)	
)	MEMORANDUM OF OPINION (NOT INTENDED FOR PUBLICATION)
)	

Now before the Court is the United States' motion for order compelling City of Barberton to produce documents with respect to which it asserts work product immunity or attorney-client privilege ("motion"), filed on March 14, 2012.

The court has jurisdiction over this case pursuant to 28 U.S.C. § 1334 and the general order of reference entered in this district on April 4, 2012. Venue in this district and division is proper pursuant to 28 U.S.C. § 1409. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2).

This opinion is not intended for publication or citation. The availability of this opinion, in electronic or printed form, is not the result of a direct submission by the court.

FACTS

On March 14, 2012, the United States filed a motion seeking an order compelling the City of Barberton (“City”) to produce documents to which it asserts attorney-client privilege or attorney work product privilege. The United States asserts that it served a subpoena on the City seeking documents that reveal the intent and reasoning of the City, its insurers, and its counsel for payment of a settlement to Debtors. Specifically, the United States seeks to ascertain the portion of the payment allocated to the settlement of tort claims for physical injuries and/or physical sickness and the portion of the payment allocated to the settlement of tort claims for emotional or other non-physical injuries or sickness, non-tort claims, and punitive damages.

On May 17, 2012, the Court entered an order granting the United States’ motion for order compelling the City to produce documents and ordered that the City produce all documents claimed as privileged within thirty (30) days from the date of the order for an in camera inspection.

The City produced documents to the Court for an in camera inspection on June 14, 2012 in an electronic format, compact discs, along with a privilege log. On June 21, 2012, the Court entered correspondence to the City which requested the submission in paper format of documents listed on the privilege log that the Court was unable to locate among the documents on the discs provided. On July 2, 2012, the City submitted the requested documents in paper. On July 3, 2012, the City supplemented the documents submitted with three (3) additional documents and a supplemental privilege log.

The City’s privilege logs reference 164 documents, which amounted to thousands of pages for the Court to review. More troubling than the sheer volume of documents was the fact that the City almost entirely ignored the Court’s May 17, 2012 order. That order provided that the City was to organize each document by a number assigned on the privilege log into binders with tabs. While the City asked for and obtained the approval of the Court to provide the documents in an electronic format, the City just loaded the documents onto discs and let the Court guess which document pertained to which entry on the privilege logs. The privilege logs contained the number of the disc that each document was located. However, in many instances, the Court could not find the document on the indicated disc and, instead, located it on another disc. In addition, some of the documents were duplicated on several discs. The end result was great difficulty for the Court when reviewing these documents.

For purposes of identification, the Court numbered each document included on the privilege logs and attaches the numbered privilege logs as Exhibit A to this Memorandum of Opinion. Throughout this Memorandum of Opinion, the Court identifies each document by the number assigned to it on the privilege logs in Exhibit A.

LAW AND ARGUMENT

Federal Rule of Bankruptcy Procedure 7037 is applicable to this matter and incorporates Federal Rule of Civil Procedure 37. The Court finds that the parties attempted to resolve this dispute before bringing it to the Court in accordance with Local Bankruptcy Rule 7026 and Fed. R. Civ. P. 26(c)(1) and 37(a)(1).

I. Attorney-Client Privilege

“It is a general rule that confidential communications between an attorney and his client, made because of the professional relationship and concerning the subject matter of the attorney’s employment, are privileged from disclosure, even for the purposes of the administration of justice.” United States v. Goldfarb, 328 F.2d 280, 281 (6th Cir. 1964). Attorney-client privilege applies to documents as follows:

- (1) Where legal advice of any kind is sought
- (2) from a professional legal adviser in his capacity as such,
- (3) the communications relating to the purpose,
- (4) made in confidence
- (5) by the client,
- (6) are at his instance permanently protected
- (7) from disclosure by himself or by the legal adviser,
- (8) except [where] the protection be waived.

Id.; *accord In re Classicstar Mare Lease Litig.*, No. 5:07-cv-353-JMH, 2012 U.S. Dist. LEXIS 49589, at 23-24 (E.D. Ky. Apr. 6, 2012). In addition, the attorney-client privilege “covers records of communications between attorneys and their government clients pertaining to the attorneys’ legal advice.” The State Ex Rel. Dawson v. Bloom-Carroll Local Sch. Dist., 131 Ohio St. 3d 10, 15 (Ohio 2011). It includes correspondence that reveals the client’s motivation for seeking legal representation, the nature of the services to be provided, strategies for litigation, and other confidential information exchanged during representation. *Id.*

The City claims attorney-client privilege for fifty-six (56) of the 164 documents.¹ The majority of these documents are litigation plans, status reports, and correspondence regarding settlement, the City’s policies, and retention of experts. In addition, the City also claims attorney-client privilege for the transmittal of invoices for payments to experts and other services.

After reviewing these fifty-six (56) documents, the Court finds that all these documents fall under the attorney-client privilege except for the transmittal of invoices for experts and other services rendered. These documents contain information pertaining to the attorneys’ legal advice to the City and reveal the City’s motivation for seeking legal representation, litigation strategies, and other confidential information.

¹ Nearly all of the documents claimed as privileged by the attorney-client privilege are also claimed privilege under the attorney work product doctrine. The Court reviews these documents for whether attorney-client privilege only applies in this section and will address whether the documents are privileged under the attorney work product doctrine below.

Accordingly, the Court finds that documents 109, 128, 134, 135, 136, 140, 156, 157, and 158 are not subject to the attorney-client privilege and are discoverable by the United States. The remaining documents for which attorney-client privilege is claimed are privileged and are not discoverable by the United States.²

II. Attorney Work Product Doctrine

The work-product doctrine protects an attorney's trial preparation materials from discovery to preserve the integrity of the adversarial process. The work-product doctrine is a procedural rule of federal law [Federal Rule of Civil Procedure] 26(b)(3) protects (1) "documents and tangible things"; (2) "prepared in anticipation of litigation or for trial"; (3) "by or for another party or its representative."

In re Professionals Direct Ins. Co., 578 F.2d 432, 438 (6th Cir. 2009) (citing Hickman v. Taylor, 329 U.S. 495, 510-14 (1947)). The protection of Rule 26(b)(3) is limited to one who is a party to the litigation in which discovery is sought. Arkwright Mutual Ins. Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA., No. 93-3084, 1994 U.S. App. LEXIS 3828, at 11-12 (6th Cir. 1994). Thus, "[d]ocuments prepared for one who is not a party to the present suit are wholly unprotected" Id. at 12 (quoting C. Wright & A. Miller, Federal Practice and Procedure § 2024, at 201-2). However, a court may issue a protective order to "protect a ... person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c).

The City claims the majority of the documents on its privilege logs as privileged by the attorney work product doctrine. The City is not a party to the instant matter for which the discovery is sought. The United States seeks the documents to make a determination about tax liability for the Debtors in these bankruptcy cases. The City was a party in the previous litigation, but is not a party to the instant matters. Thus, the attorney work product doctrine does not apply to the City's documents. Except for the documents found to be privileged under the attorney-client privilege as enumerated above, all of the documents listed on the privilege logs are not privileged under the attorney work product doctrine and, thus, are discoverable by the United States. If appropriate, the City may request that the Court issue a protective order.

CONCLUSION

Accordingly, the Court finds that, except for the documents deemed to be privileged as enumerated above, the City shall provide the documents on its privilege logs to the United States within fourteen (14) days.

An order will be entered simultaneously with this opinion.

² The following is an all-inclusive list of the documents subject to attorney-client privilege: 2, 3, 4, 7, 8, 16, 17, 31, 32, 33, 39, 40, 41, 47, 49, 50, 52, 53, 57, 60, 63, 64, 66, 71, 73, 74, 83, 90, 94, 95, 96, 97, 99, 100, 102, 110, 123, 125, 126, 129, 132, 144, 153, 161, 162, 163, and 164.

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City of Barberton's Privilege or Work-Product Documents Log

DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION	Doc. #
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1	N/A	Various Attorneys at Mazanec, Raskin & Ryder	Scottsdale Ins. Co.; file	MR&R research notes, memoranda, case law compilations	Attorney work product
2	03/06/2007	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Litigation Plan	Attorney-client privilege/attorney work product
3	09/14/2007	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Supplemental Litigation Plan	Attorney-client privilege/attorney work product
4	03/14/2008	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Supplemental Litigation Plan	Attorney-client privilege/attorney work product
5	09/11/2008	Carl E. Cormany, Esq., MR&R	File	Memo regarding Plaintiffs Discovery Requests	Attorney work product
6	09/11/2008		Notes for file	Talking Points for Status Conference regarding mental health records	Attorney work product
7	09/16/2008	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Supplemental Litigation Plan	Attorney-client privilege/attorney work product
8	09/16/2008	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Supplemental status report	Attorney-client privilege/attorney work product
9	11/05/2008	Todd M. Raskin, Esq., MR&R	File	Memo regarding Dr. Platt	Attorney work product

EXHIBIT

A

City of Barberton's Privilege or Work-Product Documents Log

DOC #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON-PRODUCTION
10	12/08/2008	Todd M. Raskin, Esq., MR&R	Eve Green, Paralegal, MR&R	Memo regarding medical providers: Aultman Hospital; Matthew Inman, M.D., Margaret Kessler, Ph.D., Kaplan Consulting & Counseling, Carrollton Medical Management	Attorney work product
11	01/02/2009	Matthew Inman, M.D.	Todd M. Raskin, MR&R	Confidential Medical Records of Clarence Elkins	Attorney work product
12	01/02/2009	Samaritan Behavioral Health Center	Todd M. Raskin, MR&R	Confidential Medical Records of Melinda Elkins	Attorney work product
13	02/16/2009	Paralegal Dept.		Index of Medical Records of Clarence Elkins, Sr.	Attorney work product
14	02/18/2009	Donna Czerwinski, Paralegal	Todd M. Raskin, MR&R	Memo regarding summary of Elkins medical records.	Attorney work product
15	02/18/2009	Todd M. Raskin, Esq., MR&R	Dr. Swales, Expert	Letter to Dr. Swales regarding psychological evaluation of Clarence Elkins	Attorney work product
16	02/19/2009	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Supplemental status report summarizing medicals.	Attorney-client privilege/attorney work product
17	04/02/2009	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Supplemental Litigation Plan	Attorney-client privilege/attorney work product

City of Barberton's Privilege or Work-Product Documents Log

DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON-PRODUCTION	Doc. #
04/24/2009	Eve Green, Paralegal, MR&R	Carroll County Alcohol Addiction	Letter requesting medical records	Attorney work product	18
05/20/2009	Carroll County Alcohol & Addiction Program	Todd M. Raskin, MR&R	Confidential Medical Records of Clarence Elkins	Attorney work product	19
05/20/2009	Eve Green, Paralegal, MR&R	Dr. Swales, Expert	Letter enclosing medical records	Attorney work product	20
05/21/2009	Eve Green, Paralegal MR&R	Todd M. Raskin, MR&R	Memo regarding Elkins' Carroll County Alcohol Program	Attorney work product	21
05/21/2009	Eve Green, Paralegal, MR&R	File	Typed notes of summary of Carroll County Alcohol Addiction	Attorney work product	22
06/03/2009	Family Practice Center of Louisville	Todd M. Raskin, MR&R	Clarence Elkins Medical Records of 12/23/2008	Attorney work product	23
06/03/2009	Kessler Psychological Services	Todd M. Raskin, MR&R	Clarence Elkins, Confidential Medical Records	Attorney work product	24
06/03/2009	Kaplan Consulting & Counseling	Todd M. Raskin, MR&R	Confidential Medical Records of Clarence Elkins	Attorney work product	25
06/03/2009	Aultman Hospital and Alliance Community Svc.	Todd M. Raskin, MR&R	Confidential Medical Records of Clarence Elkins	Attorney work product	26

City of Barberton's Privilege or Work-Product Documents Log

DOC #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION
27	06/03/2009	Mercy Medical Center-Billing	Todd M. Raskin, MR&R	Confidential medical bills of Melinda Elkins	Attorney work product
28	06/03/2009	Samaritan Behavioral Health, Inc.	Todd M. Raskin, MR&R	Confidential Medical Records of Melinda Elkins	Attorney work product
29	06/03/2009	Matthew Inman Records & Billing	Todd M. Raskin, MR&R	Confidential Medical Records of Clarence Elkins	Attorney work product
30	06/03/2009	Carrollton Medical Facility	Todd M. Raskin, MR&R	Confidential Medical Records, including records from Diana Dally, RN	Attorney work product
31	10/13/2009	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Supplemental Litigation Plan	Attorney-client privilege/attorney work product
32	08/10/2010	John T. McLandrich, MR&R	Scottsdale Ins. Co.	Letter regarding 6 th Circuit Ct. of Appeals denying summary judgment	Attorney-client privilege/attorney work product
33	08/18/2010	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Supplemental Litigation Plan	Attorney-client privilege/attorney work product
34	09/28/2010	Julie A. Bickis, Esq., MR&R	Todd M. Raskin, Esq., MR&R	Memo regarding Jury Verdict Research	Attorney work product
35	10/11/2010	Todd M. Raskin, Esq., MR&R	Patrick Stetz, Selective Ins.	Correspondence regarding settlement.	Attorney work product

City of Barberton's Privilege or Work-Product Documents Log

Doc.
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DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION
36				
10/11/2010	Todd M. Raskin, Esq., MR&R	Patrick Stetz, Selective Ins.	Email regarding settlement and preparation for trial of case.	Attorney work product
37	Thomas Glassman, Esq., Smith Rolffes & Skavdahl.	Richard Garner, Davis & Young, Todd M. Raskin, MR&R	Correspondence regarding settling claims.	Attorney work product
38	Thomas Glassman, Esq., Smith Rolffes & Skavdahl.	Richard Garner, Davis & Young, Todd M. Raskin, MR&R	Correspondence with regard to settlement.	Attorney work product
39	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Supplemental Litigation Plan	Attorney-client privilege/attorney work product
40	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Correspondence regarding settlement.	Attorney-client privilege/attorney work product
41	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Correspondence regarding settlement terms.	Attorney-client privilege/attorney work product
42	Todd M. Raskin, Esq., MR&R	Mr. Swartz of JWF Specialty Co/Old National Insurance	Correspondence regarding mediation and settlement discussions.	Attorney work product
43	Todd M. Raskin, Esq., MR&R	Carmen Naso, Esq., CWRU School of Law	Correspondence regarding settlement.	Attorney work product
44	Todd M. Raskin, Esq., MR&R	Dr. Swales, MetroHealth (Defense Expert)	Correspondence regarding settlement.	Attorney work product

City of Barberton's Privilege or Work-Product Documents Log

DOC. #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION
45	11/17/2010	Todd M. Raskin, Esq., MR&R	Tony Monheim (Defense Expert)	Correspondence regarding settlement.	Attorney work product
46	11/17/2010	Todd M. Raskin, Esq., MR&R	Steve Rothlein (Defense Expert)	Correspondence regarding settlement.	Attorney work product
47	12/16/2010	Selective Insurance Co.	City of Barberton	Policyholder's Release & Assignment	Attorney-client privilege/attorney work product
48	12/27/2010	Todd M. Raskin, Esq., MR&R	Selective Ins. & JWF Specialty Co./Old National Insurance	Correspondence regarding draft settlement and release.	Attorney work product
49	12/27/2010	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co.	Correspondence regarding status of settlement.	Attorney-client privilege/attorney work product
50	05/18/2007	John Lyserko, Law Director	Carl E. Cormany, Esq.	Email regarding Elkins bankruptcy	Attorney-client privilege
51	09/12/2007	Steve Rothlein, Expert	Carl E. Cormany, Esq.	CV and rates for expert	Attorney work product
52	08/23/2010	Carol E. Cormany, Esq.	Scottsdale Insurance Co.	Email regarding joint motion for continuance of CMC	Attorney-client privilege
53	09/09/2010- 09/13/2010	Scottsdale Insurance Co.	Todd M. Raskin, MR&R	String of emails regarding CMC conference.	Attorney-client privilege/work product

City of Barberton's Privilege or Work-Product Documents Log

Doc. #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION
54	09/12/2010- 09/13/2010	David Swartz, Old National Ins.	Todd M. Raskin, MR&R	Email regarding CAN policy and coverage.	Attorney work product
55	09/10/2010- 09/14/2010	Elizabeth McLaughlin, RLI Corp.	Todd M. Raskin, MR&R	String of emails regarding additional coverage.	Attorney work product
56	09/10/2010	David Swartz, Old National Ins.	Todd M. Raskin, MR&R	String of emails regarding additional coverage.	Attorney work product
57	09/15/2010	Scottsdale Insurance Co.	Todd M. Raskin, MR&R	Email regarding future strategy regarding settlement strategy	Attorney-client privilege/work product
58	09/15/2010	Bob Rosenthal, Selective Insurance	Todd M. Raskin, MR&R	Email regarding policy with regard to future strategy.	Attorney work product
59	09/15/2010	Todd M. Raskin, MR&R	Ms. Eiber, Brouse McDowell City of Barberton	Email regarding policies and future strategy.	Attorney work product
60	9/15/2010	Todd M. Raskin, MR&R	Lisa Miller, Law Director of City of Barberton	Email transmitting policies.	Attorney-client privilege/work product
61	09/17/2010	Keven Eiber, Brouse McDowell	Todd M. Raskin, MR&R	Email requesting additional policies.	Attorney work product
62	09/17/2010	Bob Rosenthal, Selective Insurance	Mary Ann Micklus & Todd M. Raskin	Email regarding insurance policy.	Attorney work product
63	09/20/2010	Todd M. Raskin, MR&R	Scottsdale, RLI Corp., Selective, Old National Ins.	Email transmitting Plaintiff's settlement demand.	Attorney-client privilege/work product

City of Barberton's Privilege or Work-Product Documents Log

DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON-PRODUCTION
64				Doc. #
09/20/2010	Todd M. Raskin, MR&R	Lisa Miller, Law Director	Email transmitting Plaintiff's settlement demand.	Attorney-client privilege/work product
65				
09/24/2010	Todd M. Raskin, MR&R	Swartz of Old National Ins.	Email transmitting coverage position.	Attorney work product
66				
09/24/2010	Todd M. Raskin, MR&R	Scottsdale Insurance Co.	Email transmitting status report.	Attorney-client privilege/work product
67				
09/24/2010	Todd M. Raskin, MR&R	Carmen Naso, Expert	Email transmitting documents with regard to strategy of case.	Attorney work product
68				
09/27/2010	Todd M. Raskin, MR&R	Keven Eiber, Brouse	String of emails regarding RLI's coverage letter.	Attorney work product
69				
09/28/2010	Carmen Naso, Expert	Todd M. Raskin, MR&R	Email requesting Affidavit in regards to strategy.	Attorney work product
70				
09/29/2010	Bob Rosenthal	Patrick Stetz & Todd Raskin	Email regarding reassignment.	Attorney work product
71				
09/29/2010	Todd M. Raskin, MR&R	Scottsdale Insurance Co.	Email transmitting retention letter to Expert Naso.	Attorney-client privilege/work product
72				
10/05/2010	Carmen Naso, Expert	Todd M. Raskin, MR&R	Email requesting information of testimony.	Attorney work product

City of Barberton's Privilege or Work-Product Documents Log

DOC. #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION
73	10/05/2010	Todd M. Raskin, MR&R	Lisa Miller, City of Barberton	Email transmitting Plaintiff's new settlement demand, etc.	Attorney-client privilege/work product
74	10/11/2010	Todd M. Raskin, MR&R	Scottsdale Insurance Co.	Email transmitting current status of case.	Attorney-client privilege/work product
75	10/11/2010	Todd M. Raskin, MR&R	Selective Insurance Co.	Email transmitting current status of case.	Attorney work product
76	10/11/2010	Todd M. Raskin, MR&R	RLI Corp.	Email transmitting current status of case.	Attorney work product
77	10/11/2010	Todd M. Raskin, MR&R	Tony Monheim, Expert	Email transmitting notice of trial date.	Attorney work product
78	10/11/2010	Todd M. Raskin, MR&R	Rothlein, Expert	Email transmitting notice of trial date.	Attorney work product
79	10/11/2010	Todd M. Raskin, MR&R	Naso, Expert	Email transmitting notice of trial date.	Attorney work product
80	10/11/2010	Betsy from RLI Corp.	Todd M. Raskin, MR&R	Email regarding status of demands.	Attorney work product
81	10/11/2010	Todd M. Raskin, MR&R	Patrick Stetz, Selective Insurance	Email transmitting letter regarding settlement	Attorney work product
82	10/12/2010	Todd M. Raskin, MR&R	Carl E. Comany, MR&R	Email requesting Carl to prepare the mediation statement.	Attorney work product

City of Barberton's Privilege or Work-Product Documents Log

DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION	DOC. #
10/12/2010	Todd M. Raskin, MR&R	Scottsdale Insurance Co.	Email transmitting letters regarding trial preparation.	Attorney-client privilege/work product	83
10/12/2010- 10/13/2010	Patrick Stetz, Selective	Todd M. Raskin, MR&R	String of emails regarding RLI's denial of coverage.	Attorney work product	84
10/13/2010	Todd M. Raskin, MR&R	Keven Eiber, Brouse McDowell	Email transmitting mediation notices.	Attorney work product	85
10/13/2010	Todd M. Raskin, MR&R	Rory Dunne, Karbal, Cohen	String of emails regarding fee bills.	Attorney work product	86
10/15/2010- 10/16/2010	Todd M. Raskin, MR&R	Carmen Naso, Expert	String of emails regarding fee conference.	Attorney work product	87
10/19/2010	Todd M. Raskin, MR&R	Atty. Richard Gartner, Davis & Young	Email regarding Rosen research proposal.	Attorney work product	88
10/19/2010	Todd M. Raskin, MR&R	Atty. Thomas Glassman, Smith, Rolfe & Skavdahl	Email regarding Rosen research proposal and settlement.	Attorney work product	89
10/19/2010	Todd M. Raskin, MR&R	Atty. Miller & Eiber	Email regarding Rosen research proposal and discussion of settlement.	Attorney-client privilege/work product	90
10/19/2010	Todd M. Raskin, MR&R	Atty. Kurt Zitter	Email regarding Plaintiff's settlement demand.	Attorney work product	91
10/20/2010	Atty. Rich Garner, Davis & Young	Todd M. Raskin, MR&R	Email regarding denial of contribution to settlement.	Attorney work product	92

City of Barberton's Privilege or Work-Product Documents Log

DOC. #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION
93	10/20/2010	Patrick Stetz, Selective	Todd M. Raskin, MR&R	Email transmitting Selective's policy.	Attorney work product
94	10/21/2010	Matt Hudak, City of Barberton	Carl E. Comany, MR&R	Email transmitting explanation page.	Attorney-client privilege/work product
95	10/21/2010	Scottsdale Insurance	Todd M. Raskin, MR&R	Email requesting developments in case.	Attorney-client privilege/work product
96	10/21/2010	Todd M. Raskin, MR&R	Atty. Miller, City of Barberton	Email transmitting jury consultant fee.	Attorney-client privilege/work product
97	10/22/2010	Atty. Miller, City of Barberton	Todd M. Raskin, City of Barberton	Email regarding executive session being called to discuss insurance litigation.	Attorney-client privilege/work product
98	10/23/2010	Todd M. Raskin, MR&R	Keven Eiber, Brose McDowell	Email transmitting Glassman letter to TMR.	Attorney work product
99	10/27/2010	Atty. Miller, City of Barberton	Todd M. Raskin, MR&R	Email regarding funds for consultant.	Attorney-client privilege/work product
100	10/27/2010	Todd M. Raskin, MR&R	Atty. Miller, City of Barberton	Email regarding Glassman letter to Raskin.	Attorney-client privilege/work product
101	10/27/2010	Todd M. Raskin, MR&R	Atty. Zitzer	Email regarding umbrella insurers.	Attorney work product

City of Barberton's Privilege or Work-Product Documents Log

DOC. #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION
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102	11/02/2010	Scottsdale Insurance Co.	Todd M. Raskin, MR&R	Email authorizing payment for mock jury trial.	Attorney-client privilege/work product
103	11/03/2010	Patrick Stetz, Selective Insurance	Todd M. Raskin, MR&R	Email regarding "bottom line" settlement demand.	Attorney work product
104	11/03/2010	Todd M. Raskin, MR&R	Patrick Stetz, Selective	Email transmitting Plaintiff's "bottom line" settlement demand.	Attorney work product
105	11/03/2010	Carl E. Cormany, MR&R	Todd M. Raskin, MR&R	String of emails transmitting memo and discussion of new strategy regarding Elkins.	Attorney work product
106	11/04/2010	Todd M. Raskin, MR&R	Dr. Swales, Expert	Transmit Kuper's reports.	Attorney work product
107	11/05/2010	Tony Monheim, Expert	Todd M. Raskin, MR&R	Email regarding trial date.	Attorney work product
108	11/08/2010- 11/11/2010	Adam Rosen, Jury Consultants	Todd M. Raskin, MR&R	String of emails regarding mock jury trial.	Attorney work product
109	11/09/2010	Todd M. Raskin, MR&R	Scottsdale Insurance	Transmit invoices	Attorney-client privilege/work product
110	11/09/2010	Todd M. Raskin, MR&R	Atty. Miller, City of Barberton	Email regarding mock jury trial.	Attorney-client privilege/work product

City of Barberton's Privilege or Work-Product Documents Log

DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION
11/09/2010	Todd M. Raskin, MR&R	Atty. Eiber, Brouse McDowell	Email regarding mock jury trial	Attorney work product
11/09/2010	Todd M. Raskin MR&R	Atty. Garner, Davis & Young	Email regarding mock jury trial	Attorney work product
11/09/2010	Todd M. Raskin, MR&R	Atty. Glassman, Smith, Rolfe & Skavdahl	Email regarding mock jury trial	Attorney work product
11/09/2010	Todd M. Raskin, MR&R	Atty. Dunne, Karbal, Cohen, Economou, Silk & Dunne	Email regarding mock jury trial.	Attorney work product
11/10/2010	Todd M. Raskin, MR&R	Dr. Swales, Expert	Email transmitting Dr. Kuper's DVD	Attorney work product
11/10/2010	Patrick Stetz, Selective	Todd M. Raskin, MR&R	Email regarding meeting to discuss mediation.	Attorney work product
11/10/2010	Todd M. Raskin, MR&R	Dr. Swales, Expert	Email asking if there is a supplemental report.	Attorney work product
11/11/2010	Carl E. Cormany, MR&R	Todd M. Raskin, MR&R	Email regarding time record and subpoena to Plaintiffs.	Attorney work product
11/11/2010	Shawn A. Romer, MR&R	Linda Weber, Visual Evidence	Transmit supplements and miscellaneous in support of demonstrative evidence.	Attorney work product
11/11/2010	Adam Rosen, Jury Consultants	Todd M. Raskin, MR&R	Request for retainer.	Attorney work product

City of Barberton's Privilege or Work-Product Documents Log

DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION	DOC. #
11/11/2010	Todd M. Raskin, M.R.&R	Todd M. Raskin, M.R.&R	Transmit letter regarding retainer check	Attorney work product	121
11/15/2010	Todd M. Raskin, M.R.&R	Atty Glassman/Atty Dunne	String of emails regarding site of mock jury trial.	Attorney work product	122
11/15/2010	Todd M. Raskin, M.R.&R	Atty's Dunne, Eber, Garner, Miller; Scottsdale Ins.; Hudak (City of Barberton)	Email regarding increased settlement demand from Plaintiff and strategy going forward.	Attorney-client privilege/work product	123
11/15/2010	Todd M. Raskin, M.R.&R	Adam Rosen, Jury Consultants	Email regarding Elkins timeline and criminal investigation.	Attorney work product.	124
11/15/2010	Todd M. Raskin, M.R.&R	Scottsdale Insurance	Email deposition summaries of experts	Attorney-client privilege/work product	125
11/15/2010	Carl E. Commane, M.R.&R	Scottsdale Insurance	Email supplemental Litigation Development Report	Attorney-client privilege/work product	126
11/16/2010	Todd M. Raskin, M.R.&R	Dr. Swales, Expert	Email depo transcripts	Attorney work product	127
11/16/2010	Todd M. Raskin, M.R.&R	Scottsdale Insurance Co.	Transmit expert invoices.	Attorney-client privilege/work product	128
11/16/2010	Todd M. Raskin, M.R.&R	Scottsdale Insurance Co.	Transmit settlement of case.	Attorney-client privilege/work product	129

City of Barberton's Privilege or Work-Product Documents Log

DOC #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON-PRODUCTION
130	11/17/2010	Todd M. Raskin, MR&R	Expert Rothlein, Swales, Monheim and Naso	Transmit settlement of case.	Attorney work product
131	11/17/2010	Todd M. Raskin, MR&R	Atty. Swartz, Old National Insurance.	Transmit Order dismissing case.	Attorney work product
132	11/17/2010	Todd M. Raskin, MR&R	Scottsdale Insurance Co.	Transmit Order dismissing case and settlement terms.	Attorney-client privilege/work product
133	11/18/2010	Atty. Garner, Davis & Young	Todd M. Raskin, MR&R	Email regarding finalized settlement agreement.	Attorney work product
134	11/19/2010	Todd M. Raskin, MR&R	Scottsdale Insurance Co.	Transmit Dr. Swales invoice.	Attorney-client privilege/work product
135	11/19/2010	Todd M. Raskin, MR&R	Scottsdale Insurance Co.	Transmit Dr. Kuper's invoice	Attorney-client privilege/work product
136	11/19/2010	Todd M. Raskin, MR&R	Scottsdale Insurance Co.	Transmit Visual Evidence invoice.	Attorney-client privilege/work product
137	11/22/2010	Todd M. Raskin, MR&R	Charlie Snyder, Ohio Atty. General's Office	Transmit letter regarding confirmed settlement.	Attorney work product
138	11/23/2010	Atty Glassman, Smith, Rolfe & Skavdahl	Todd M. Raskin, Esq.	Letter regarding mediation	Attorney work product

City of Barberton's Privilege or Work-Product Documents Log

DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION
DATE #				
11/29/2010	City of Barberton	Todd M. Raskin, MR&R	Barberton Municipal Court documents	Attorney work product
12/03/2010	Todd M. Raskin, MR&R	Scottsdale Insurance	Transmit Naso's W-9	Attorney-client privilege/work product
12/15/2010	Atty. Glassman, Smith, Rolfe	Todd M. Raskin, MR&R	Transmit letter and proposed assignment.	Attorney work product
12/16/2010	Patrick Stetz, Selective	Todd M. Raskin, MR&R	Email structure vendor information.	Attorney work product
12/22/2010	Keven Eiber, Brouse McDowell	Todd M. Raskin, MR&R	Policyholder's Release & Assignment	Attorney work product
12/27/2010	Todd M. Raskin, MR&R	Scottsdale Insurance	Email status update on settlement	Attorney-client privilege/work product
01/04/2011	Atty Glassman, Smith, Rolfe	Todd M. Raskin, MR&R	Email discussing language in settlement agreement.	Attorney work product
1/4/11	Todd M. Raskin, MR&R	City of Barberton	Draft Comprehensive Release of All Claims & Demands	Attorney work product
01/05/2011	Todd M. Raskin, MR&R	Patrick Stetz, Selective; David Swartz, Old National Insurance; Scottsdale Insurance; Richard Garner, Davis & Young	Email transmitting Elkins Order signed on Compromise, Loevy W-9; and correspondence explaining same	Attorney work product
1/4/11	Todd M. Raskin, MR&R			
01/07/2011	Todd M. Raskin, MR&R			

City of Barberton's Privilege or Work-Product Documents Log

DOC. #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON-PRODUCTION
148	01/06/2011	Todd M. Raskin, MR&R	City of Barberton	Draft Comprehensive Release	Attorney work product
149	01/07/2011	Todd M. Raskin, MR&R	City of Barberton	Draft Comprehensive Release	Attorney work product
150	01/11/2011	David Swartz, Old National Ins.	Todd M. Raskin, MR&R	Email regarding settlement draft.	Attorney work product
151	01/12/2011	Todd M. Raskin, MR&R	Patrick Stetz, Selective Ins.	Email regarding re-order checks	Attorney work product
152	01/13/2011	Todd M. Raskin, MR&R	Stetz, Selective Insurance	String of emails regarding W-9s and request for socials	Attorney work product
153	01/18/2011	Todd M. Raskin, MR&R	Atty. Miller, City of Barberton	Email transmitting Order dismissing case.	Attorney-client privilege/work product
154	01/18/2011 - 01/19/2011	Todd M. Raskin, MR&R	David Swartz, Old national Ins.	Email of emails regarding settlement draft.	Attorney work product
155	01/24/2011	Patrick Stetz, Selective Ins.	Todd M. Raskin, MR&R	Email regarding special check handling.	Attorney work product
156	01/27/2011	Scottsdale Insurance Co.	Todd M. Raskin, MR&R	Email copy of computer generated check.	Attorney-client privilege/work product
157	02/15/2011	Todd M. Raskin, MR&R	Scottsdale Insurance Co.	Email transmitting Dr. Kuper's invoice	Attorney-client privilege/work product

In re Melinda Louise Elkins, Case No. 05-65317 (USBC ND Ohio)
In re Clarence Arnold Elkins, II, Case No. 05-69543 (USBC ND Ohio)

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DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON- PRODUCTION	DOC. #
02/16/2011	Scottsdale Insurance Co.	Todd M. Raskin, MR&R	Email regarding rush payment for Dr. Kuper.	Attorney-client privilege/work product	158
03/17/2011	Todd M. Raskin, MR&R	Richard Studenic, Wichert Insurance	Email transmitting Executed Release.	Attorney work product	159
09/20/2011	Atty. Brian L. Wildermuth, Selective Ins.	Carl E. Cormany, MR&R	Email requesting settlement agreement/release	Attorney work product	160
11/15/2011	Karen Adinolfi, Esq.	Todd M. Raskin, MR&R/Lisa Miller, City of Barberton	Email regarding subpoena received by the City of Barberton	Attorney-client privilege/work product	161

In re Melinda Louise Elkins, Case No. 05-65317 (USBC ND Ohio)
In re Clarence Arnold Elkins, II, Case No. 05-69543 (USBC ND Ohio)

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DOC. #	DATE	AUTHOR	RECIPIENT(S)	DESCRIPTION	REASON FOR NON-PRODUCTION
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102	08/19/2010	Todd M. Raskin, Esq., MR&R	Blair Libby	Letter regarding status of case	Attorney-client privilege/attorney work product
103	09/16/2010	Roetzel & Andress	Blair Libby, Swartz & Raskin	Letter regarding status of case and settlement	Attorney-client privilege/attorney work product
104	09/17/2010	Todd M. Raskin, Esq., MR&R	Scottsdale Ins. Co., RLI, Selective & JWF Specialty	Letter regarding settlement demand	Attorney-client privilege/attorney work product